



## CITY OF NEWPORT BEACH HARBOR COMMISSION AGENDA

Council Chambers – 100 Civic Center Drive  
Wednesday, October 9, 2013 – 6:00 PM

### **Harbor Commission Members:**

Duncan McIntosh, Chair		
Brad Avery	Paul Blank	David Girling
Karen Rhyne	Joe Stapleton	Doug West

### **Staff Members:**

Chris Miller, Harbor Resources Manager  
Shannon Levin, Harbor Resources Supervisor

### **Council Liaison:**

Nancy Gardner

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#### **1) CALL MEETING TO ORDER**

#### **2) ROLL CALL**

#### **3) PLEDGE OF ALLEGIANCE**

#### **4) PUBLIC COMMENTS**

*Public comments are invited on agenda and non-agenda items generally considered to be within the subject matter jurisdiction of the Commission. Speakers must limit comments to three (3) minutes. Before speaking, we invite, but do not require, you to state your name for the record. The Commission has the discretion to extend or shorten the speakers' time limit on agenda or non-agenda items, provided the time limit adjustment is applied equally to all speakers. As a courtesy, please turn cell phones off or set them in the silent mode.*

#### **5) APPROVAL OF MINUTES – September 11, 2013 Minutes**

#### **6) CURRENT BUSINESS**

##### **1. *Review Proposed Changes to Newport Beach Municipal Code Section 17.10 – Marine Activities Permit***

In an effort to simplify the Marine Activities Permit ("MAP") process for both the permittee and City, staff is proposing some conceptual changes to the Newport Beach Municipal Code ("NBMC") Section 17.10. The Harbor Commission is requested to provide input before staff requests approval from the City Council

##### **Recommendation:**

- 1) Provide input to staff.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least seventy-two (72) hours in advance of each regular meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. If requested, this agenda will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Please contact the City Clerk's Office at least forty-eight (48) hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible at (949) 644-3005 or [cityclerk@newportbeachca.gov](mailto:cityclerk@newportbeachca.gov).

- 7) SUBCOMMITTEE REPORTS
- 8) QUESTIONS AND ANSWERS WITH COUNCIL LIAISON ON HARBOR RELATED ISSUES
- 9) QUESTIONS AND ANSWERS WITH HARBOR RESOURCES MANAGER ON HARBOR RELATED ISSUES
- 10) PUBLIC COMMENTS ON SUBCOMMITTEE REPORTS OR QUESTIONS AND ANSWERS WITH COUNCIL LIAISON OR HARBOR RESOURCES MANAGER
- 11) COMMISSION ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)
- 12) DATE AND TIME FOR NEXT MEETING: November 13, 2013, 6:00 PM  
**Council Chambers at 3300 Newport Blvd.**
- 13) ADJOURNMENT

**NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES**  
**City Council Chambers**  
**Wednesday, September 11, 2013**  
**6:00 p.m.**

**1) CALL MEETING TO ORDER**

The meeting was called to order at 6:00 p.m.

**2) ROLL CALL**

Commissioners:       Duncan McIntosh, Chair  
                              Brad Avery, Vice Chair  
                              Paul Blank  
                              David Girling  
                              Joe Stapleton  
                              Doug West  
                              Karen Rhyne, excused absence

Staff Members:       Chris Miller, Harbor Resources Manager  
                              Shannon Levin, Harbor Resources Supervisor

Council Liaison:       Council Member Nancy Gardner

**3) PLEDGE OF ALLEGIANCE**

**4) PUBLIC COMMENTS**

Chair McIntosh invited those interested in addressing the Commission to do so at this time.

Jim Mosher commented on posting recordings of Harbor Commission meetings on the City's website. Additionally, he commented on mega-yachts in the Harbor and referenced notes on Council's most recent meeting noting there was a decision about residential trash that he felt was rushed; based on incomplete information and that at the last Harbor Commission the decision regarding mega-yachts was also rushed with insufficient information. He referenced a provision in the Harbor Code indicating there is supposed to be a map at the City Clerk's office that shows where anchorages designated by Council are located. Additionally, he referenced a prior comment made by Commissioner West that anyone on a ship that was on public water could anchor, and Mr. Mosher stated that the Code does not seem to say that, nor does the Cruising Guide. He commented on temporary moorings and the need to allow them in designated areas. He felt that the Code should be followed and that the Commission should avoid setting precedents ignoring the provisions of the Code.

**5) APPROVAL OF MINUTES – August 14, 2013 Minutes**

Jim Mosher reported submitting written minor corrections to the minutes.

**Motion:** Commissioner West made a motion to approve the minutes of the Harbor Commission of the August 14, 2013, Regular Meeting, as amended. Commissioner Blank seconded the motion, which carried with 6 ayes and 0 noes. Approved.

**6) CURRENT BUSINESS**

**1. *Appeal of Harbor Resources Decision- Cantilevered Deck at 1114 E. Balboa Blvd***

Harbor Resources has received an application for a 14' deck extension at 1114 E. Balboa Blvd. The Newport Beach Municipal Code (NBMC) limits bayward projections of patio decks

to 5'; therefore, Harbor Resources staff has denied the application. The applicant has filed an appeal to be heard by the Harbor Commission.

**Recommendation:**

- 1) Uphold the denial of the application of the bayward cantilevered deck projection;
- 2) Approve the 14' deck extension as proposed; or
- 3) Approve the 14' deck extension with special conditions.

Harbor Resources Supervisor Sharon Levin presented details of the staff report including a description of the proposed project. She addressed limits set in the Municipal Code of patio decks to five (5) feet past the bulkheads over private waterways or tidelands that are not City-owned. She noted that the applicant has asked for the cantilevered deck to be at a zero lot line and addressed an existing structure and conditions and stated that the proposal to add on to the cantilevered deck would be the same dimension as the existing structure and would go out fourteen and a half (14 ½) feet and to the extension of the property lines. She addressed location, surrounding properties, existing conditions, location of nearby bulkheads and details of the proposal. She noted that staff cannot approve the application on an administrative level and that the applicant is available to respond to questions.

Brion Jeannette, project architect, stated the applicant is asking for an appeal of staff's recommendation on the requirement for the five (5) foot overhang because of the existing structure. The adjacent properties on either side both extend out approximately twenty-five (25) feet further than this property even after installation of the proposed deck. He added that they are requesting removal of the stairs because of safety concerns and explained why they are proposing the cantilevers. Mr. Jeannette addressed the existing gangway, variations in the stairs, support of the project by one of the adjacent neighbors, the proposed extension and location of the City's tidelands and Pierhead line. He added that the applicant is requesting a zero side-yard setback.

Discussion followed regarding the Harbor Commission's jurisdiction, actions required at this time and support of the project by adjacent neighbors.

Mr. Jeannette reported that there are existing piles that are holding up the existing deck and reported that at high tide, water goes to the bulkhead and that the deck is well above the tide.

Discussion followed regarding a fence on the east side, dividing the properties and access to the dock.

Ms. Levin reported that staff denied the application based on the proposal to cantilever beyond five (5) feet and the zero lot line. She added that the properties are unique so that the proposed project is not common.

It was noted that the proposed structure will extend no further than the existing structure and that the Commission has the discretion to grant the variance.

Ms. Levin added that should the Harbor Commission approve it, staff would issue an approval in concept and the applicant would submit to the agencies for approval.

Commissioner Avery expressed concerns with getting approval from the other adjacent neighbor.

Ms. Levin reported that neighbors could be notified, even if the proposal does not affect their property.

It was noted that the Coastal Commission would require notification of neighbors within three hundred (300) feet of the property.

Chair McIntosh invited those interested in addressing the Commission on this item to do so at this time.

Jim Mosher pointed out that if the matter were before the Planning Commission, the matter would not be an appeal, but rather a variance modification permit from the Zoning Code with requirements regarding findings and notification. He wondered whether there are findings listed in the Harbor Code that the Commission should be making and if not, consideration should be given to amending the Code to include them.

Chair McIntosh closed public comments.

**Motion:** Commissioner West made a motion to approve the fourteen (14) foot deck extension, as proposed, subject to notice to the adjacent owner at 1118 E. Balboa Boulevard, adding that the proposed deck is on the applicant's property, replaces the existing stairs, doesn't exceed the existing structure, does not protrude further than the existing bulkheads on either side of the subject property, is on private property, is not tidelands, the neighboring property has been notified, is consistent with existing conditions throughout the neighborhood and does not affect eelgrass. Commissioner Girling seconded the motion, which carried with 6 ayes and 0 noes. Approved.

***2. Review and Approve the Proposed Harbor Commission Objectives for Fiscal Year 2013-14, and Approve Commission Pairings with Council Members***

The Harbor Commission will review and approve the proposed Commission Objectives for 2013-14. The Commission will also assign and approve the pairing of individual Commissioners with respective Council Members for the upcoming year.

**Recommendation:**

- 1) Approve the proposed Commission Objectives for 2013-14; and
- 2) Approve the pairings of individual Commissioners with respective Council Members for the upcoming year.

Commissioner West reported that at the August meeting, the Subcommittee presented a draft of the proposed Harbor Commission objectives for 2013/2014 and that after some discussion, modifications were made and were incorporated into the proposed draft, and circulated. He listed three aspects presented for review and approval at this time. These include the objectives, the Subcommittees established with respect to each of the objectives, and the related item of the Harbor Commission/Council liaison pairings that have been considered together with the objectives. He distributed a copy of the Subcommittee's recommendations for those pairings. He offered to address questions concerning the proposed objectives and noted there are nine (9) total, and they are organized under the general headings of either 1) ensuring the long-term welfare of Newport Harbor, or 2) promoting Newport Harbor as a preferred and welcoming destination.

Council Member Gardner noted that the objectives were well-received by Council last year, and they will be well-accepted again this year.

It was noted that if they are approved, they will be shared with the Tidelands Management Committee next week.

Chair McIntosh invited those interested in addressing the Commission to do so at this time.

Jim Mosher commented on the Brown Act and felt that most of the objectives are intended to operate in an informal manner but there are rules by which they have to be set up including that they be strictly advisory, formulating a recommendation to be publicly approved before action is taken and that they be Ad Hoc Committees, with a clear objective and a clear amount of time, after which the committee will dissolve. He felt that objective number 5 is open-ended and suggested developing a clear objective of what that committee is intended to do.

Commissioner West felt that it is implicit in the way the objectives are presented that there is a time limit; that they are being proposed for the coming year.

With regards to objective number 5, it was noted that the Subcommittee has yet to meet but that indirectly, public outreach has been accomplished through the goals and objectives, and that the Subcommittee will meet in the near future.

Chair McIntosh closed public comments.

It was noted that the purpose of the Harbor Commission/Council liaison pairings is to encourage each Commissioner to establish communication with their designated Council liaison to help improve communication between the Commission and Council, and to help Council's understanding of the work of the Commission and clarify thoughts of suggestions Council may have regarding the Commission's work. He listed the recommendations relative to the Harbor Commission/Council liaisons.

**Motion:** Commissioner Stapleton made a motion to accept the Harbor Commission goals and objectives as written as well as the Subcommittee assignments and Commission/Council liaisons. Commissioner Blank seconded the motion, which carried with 6 ayes and 0 noes. Approved.

### ***3. Review the Harbor Commission's Subcommittee Final Report on Public Piers in Newport Harbor***

The Harbor Commission's subcommittee will present their final report on public piers with specific focus on visitor access to the harbor.

#### **Recommendation:**

- 1) Receive and file.

Commissioner Blank addressed the Harbor Commission's objectives for last year regarding a review of existing public piers and the opportunity to identify potential new public piers as they relate to supporting shore side businesses and amenities that boaters may want to visit. He addressed the process and issues considered, action steps taken in the review process and objectives that were defined. Commissioner Blank listed observations made and noted that existing piers are well-used and popular.

In response to an inquiry from Council Member Gardner, Commissioner Blank reported that the most frequent complaint of abuse is lingering or loitering in the shorter-time limit sections.

Commissioner Blank listed challenges associated with specific piers, additional observations and informal surveys and amenities most desirable by boaters and identified locations of those amenities as they relate to existing piers. He listed areas well-served by public piers and those that could use additional amenities. He noted opportunities to improve existing public piers through additional maintenance, improvement and attention, and opportunities to place additional piers near existing amenities. He added that the proposed recommendations relate to improving the use of existing piers including performing more frequent and extensive cleaning, dredging under and adjacent to all existing public piers and floats, reconfiguring or reconstructing docks to optimize the available space, instituting a sponsorship or adopt-a-dock program by approaching businesses, communities or individuals to partner with the City to ensure that public piers and docks are well-maintained, improve existing and add amenities on public piers, and add a dedicated function to enforce rules and raise awareness during busy Harbor use. He presented recommendations related to opportunities for additional piers including developing new public piers at the Lido Marina Village, at the Balboa Marina, at Lower Castaways, at the northwest base of the Lido Isle Bridge and one with access to West Coast Highway such as at the east end of the Balboa Bay Resort property or equivalent. In addition, Commissioner Blank addressed next steps.

It was noted that there are two piers in close proximity to each other off the East Coast Highway Bridge and there may be some difficulty installing one at Lower Castaways, and that the pier will need to be done in conjunction with the Lower Castaways project.

The possibility of Lido Marina Village installing a public dock was noted which would be an excellent opportunity for the City to negotiate with the developer.

Harbor Resources Supervisor Levin reported meeting with DJM where a discussion occurred regarding Lido Marina Village, in general. One of the conditions of redevelopment would be to ensure public access in that area.

Discussion followed regarding the proposed location of the pier at Balboa Bay Club, the need for additional piers and considering the availability of shore side parking.

It was noted that there is no public pier currently in the Lido Village area and that this objective relates to providing boater access to shore side amenities and does not cover providing pedestrian or vehicular access to one's boat.

Ensuing discussion followed regarding fishing on public docks, whether the proposed site at the Balboa Bay Resort is a public easement, use by non-guests and the priority order of the recommendations.

It was noted that as the recommendations are brought before Council, it is important that Council know how effective the Rhine Channel dock has been.

Harbor Resources Manager Chris Miller commented positively on the report and felt that bold steps can be made for improving the use of existing piers. He reported that he and Ms. Levin will be doing an extensive audit of each public pier.

Ensuing discussion pertained to the availability of State funds to do some of the work.

Council Member Gardner indicated she would like to consult with Council Member Henn to see if he would like the presentation to be given to the Tidelands Management Committee or involve Council through a study session.

Members of the Commission commented positively on the report.

Chair McIntosh invited those interested in addressing the Commission to do so at this time. There was no response and Chair McIntosh closed public comment for this item.

**Motion:** Commissioner West made a motion to receive and file the report and direct staff to provide the presentation to either the Tidelands Management Committee or Council as desired, to represent the Harbor Commission's general recommendations regarding what needs to be done relative to public piers and to further refine focus on the specific objectives that may be pursued in the near term. Commissioner McIntosh seconded the motion.

Ms. Levin noted that a motion is not needed but will proceed with taking the recommendations to Council for its consideration.

Commissioner Blank suggested that it be noted that the recommendations are in order of priority.

## **7) SUBCOMMITTEE REPORTS**

Commissioner Girling reported that the Lower Castaways Subcommittee met last Friday and discussed next steps including the development of conceptual drawings noting that a tentative meeting is scheduled for October 14, 2013, and listed related goals.

Commissioner Avery reported on the Visiting Vessels Subcommittee noting that permits were issued and that Invictus spent time in the Harbor over Labor Day weekend and there have been no major issues or complaints.

Mr. Miller reported that the permit was good for sixteen days. In addition, he reported that the MV Marama has declined to use the mooring as originally planned, and they have made alternate arrangements in the Harbor.

Residents were encouraged to provide feedback to the City regarding the issue.

Mr. Miller noted receiving a lot of positive feedback. He stated that he will generate a report for the Harbor Commission in November recapping the issue.

It was noted that the City fees are not commensurate with what others charge for mega-yachts and a suggestion was made to review those fees in the future.

#### **8) QUESTIONS AND ANSWERS WITH COUNCIL LIAISON ON HARBOR RELATED ISSUES**

Council Member Gardner announced that in November, the Chambers will be the setting of a Coastal Commission meeting and they will be presented with a report on the things the City has done in terms of public access.

Mr. Miller added that the day coincides with the Harbor Commission meeting so that the Commission's meeting in November will be held in the old Council Chambers.

Council Member Gardner commented on two mooring meetings and felt that the outcome was positive. She commented on a pier on Balboa Island that encroaches in front of the neighbor's house and that she had made a motion to keep things as they are which is to have the Harbor Commission review such matters, but that because of further discussion and the lateness of the Council meeting, it was decided to continue the matter to the next Council meeting.

#### **9) QUESTIONS AND ANSWERS WITH HARBOR RESOURCES MANAGER ON HARBOR RELATED ISSUES**

Mr. Miller commented on the mooring meetings and reported that all comments have been posted on the City's website. Staff is considering when to present the issue back to Council. Mr. Miller commented on creating a public visitor-serving slip at the Balboa Yacht Basin and addressed signage for same and related rules.

#### **10) PUBLIC COMMENTS ON SUBCOMMITTEE REPORTS OR QUESTIONS AND ANSWERS WITH COUNCIL LIAISON OR HARBOR RESOURCES MANAGER**

#### **11) COMMISSION ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)**

Discussion followed regarding the possibility of changing the Harbor Commission meeting in November to allow Members to attend the Coastal Commission meeting. Mr. Miller reported that Coastal Commission meetings are day meetings and stated that if Members want to attend, they could.

Commissioner Stapleton announced the Harbor Patrol ride-along on September 23, 2013, that Commissioner Blank set up.

Mr. Miller reported the location of the Harbor depth chart on the City's website located here:  
<http://www.newportbeachca.gov/index.aspx?page=461>

#### **12) DATE AND TIME FOR NEXT MEETING: October 9, 2013, 6:00 PM**

#### **13) ADJOURNMENT**

There being no further business to come before the Harbor Commission, the meeting was adjourned at 7:30 p.m.





== CITY OF ==

# NEWPORT BEACH

## Harbor Commission Staff Report

Agenda Item No. 1  
October 9, 2013

**TO:** HARBOR COMMISSION

**FROM:** Public Works Department  
Chris Miller, Harbor Resources Manager  
949-644-3043, [cmiller@newportbeachca.gov](mailto:cmiller@newportbeachca.gov)

**TITLE:** Review Proposed Changes to Newport Beach Municipal Code Section 17.10 – Marine Activities Permit

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**ABSTRACT:**

In an effort to simplify the Marine Activities Permit ("MAP") process for both the permittee and City, staff is proposing some conceptual changes to the Newport Beach Municipal Code ("NBMC") Section 17.10. The Harbor Commission is requested to provide input before staff requests approval from the City Council.

**RECOMMENDATION:**

1. Provide input to staff.

**FUNDING REQUIREMENTS:**

There is no specific fiscal impact related to the receiving and filing of this report.

**DISCUSSION:**

Currently, commercial user groups such as the charter and other recreational companies must apply for a MAP to operate a business in Newport Harbor per NBMC Section 17.10. (Attachment A.) The NBMC outlines the rules regarding the permits including conditions, exemptions, insurance requirements, duration, appeals etc... Although originally intended to be a permit for all businesses operating in the harbor, staff has focused on issuing permits to the industries that have the most impact to the harbor and the surrounding areas (i.e. charter vessels and boat rental companies). It should also be noted that MAPs are important to the City so that staff is aware of who is operating in the harbor especially when complaints or other issues arise.

The two major obstacles in obtaining the MAP are: 1) locating an appropriate commercial marina to operate the business; and 2) parking. There are approximately 12 approved locations throughout the harbor that offer proper berthing, adequate loading/unloading facilities, and pumpouts located at the marina.

Parking requirements, on the other hand, are more complex and require approval from the Planning Division. The parking requirement is one parking space for every three guests including crew. Parking requirements are substantial especially those companies with multiple

vessels for several hundred guests. Some companies are fortunate to have on-site parking while others have off-site agreements.

The MAP is typically issued based on the duration of the parking agreement up to one year maximum. Many companies already have long term parking arrangements and generally renew their permits by submitting a renewal form annually. Most of the renewals are largely the same year to year. Each renewal application is accompanied by charge of approximately \$200 for the processing fee. New businesses are charged approximately \$400 for application review. This fee is higher due to greater time needed for review (Attachment B.). The charter industry is also charged a passenger tax of approximately \$1.50 per person which is paid throughout the year.

### The Proposal

Staff is proposing to simplify the process for the applicants and the City. Specific language has yet to be developed, but the major points for discussion are the following:

1. MAPs can be ongoing, and do not need to be renewed each year. If the operation is the same and hasn't changed, then there is no need to reapply and pay a fee each year. (Note: A like-for-like vessel change would not qualify as a change assuming the passenger count did not change as well.) The permittee would be required to notify the City of any changes throughout the year.
2. The City is considering re-evaluating the parking requirements for the charter industry. Specifically, charter vessels have parking demands during the evening hours while the surrounding businesses generally require parking during the daytime hours. Staff is considering a "shared" parking concept which may help ease the burden for some of the companies.
3. Appeals would revert to the Harbor Commission then to the City Council. Currently, all permits are appealable to an independent hearing officer.
4. MAPs would be non-transferable. If the company changed hands or a partner changed, then an updated MAP would be required.
5. For the existing MAP permittees, a new MAP to start this new program would not be required if this were adopted.
6. All of the current rules and regulations concerning noise, berthing etc...would still be applicable and would not change.
7. MAPs would be required for industries that have an impact upon the harbor and the surrounding area, generally the recreational industries. The MAP will exclude other harbor businesses.

**Next Steps**

Staff will receive comments from the Harbor Commission, then begin drafting proposed Code language to be considered by the City Council in the next few months.

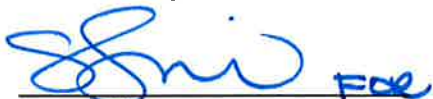
**ENVIRONMENTAL REVIEW:**

Staff recommends the Harbor Commission find this action is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Harbor Commission considers the item).

Submitted by:

  
Chris Miller

Attachments:           A. NBMC Section 17.10  
                              B. MAP Application

**Attachment A**  
**NBMC Section 17.10**

## Chapter 17.10 MARINE ACTIVITIES PERMIT

### Sections:

- [17.10.005](#) Findings and Purpose.
- [17.10.020](#) Permit for Commercial Activities in Newport Harbor Required.
- [17.10.025](#) Exemptions.
- [17.10.030](#) Application for Permit.
- [17.10.040](#) Filing Fee.
- [17.10.050](#) Issuance of Permit.
- [17.10.070](#) Power to Impose Conditions—Hold Harmless.
- [17.10.075](#) Insurance.
- [17.10.080](#) Duration of Permit.
- [17.10.085](#) Enforcement—Right of Entry.
- [17.10.090](#) Suspension/Revocation.
- [17.10.095](#) Appeal.
- [17.10.100](#) Transfer of Permit.
- [17.10.110](#) Licenses and Fees Not Exclusive.
- [17.10.120](#) Application to Existing Commercial Activities.

### **17.10.005 Findings and Purpose.**

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- A. Newport Harbor is a limited resource with an extensive existing and growing demand for marine and recreational use;
- B. There has been an increase in the nature and intensity of commercial activities such as harbor cruises, dinner cruises, boat rentals and water taxi services occurring on the waters of Newport Harbor;
- C. Some of these vessels carry a number of passengers and some are owned or operated by persons who do not have a fixed base of operation on or near the bay that can provide adequate boarding, parking or sanitation facilities necessary to serve their clients and customers;
- D. Commercial activities on Newport Harbor require City services which may not be paid by the patrons or passengers of commercial operators on Newport Harbor;
- E. Commercial activity on Newport Harbor has created an additional demand for available parking and created traffic congestion in and around the waterfront;
- F. This commercial activity has sometimes created a level of noise which has interfered with the right of residents, persons who own property and visitors on or near Newport Harbor to the

peaceful enjoyment of their property and public areas;

G. Commercial activity, especially the mix of large craft with limited maneuverability and restricted uplands access, has the potential to interfere with the safe navigation of boats and vessels operating on the waters of Newport Harbor;

H. The requirements of the chapter are necessary to minimize the traffic congestion, parking shortages, excessive noise, and the discharge of waste that could result from unregulated commercial activity and to ensure safe operation within the capacity and constraints of Newport Harbor;

I. The Harbor and Bay Element of the General Plan establishes an objective to preserve existing commercial uses in Newport Harbor to the extent necessary to maintain and enhance the charm and character of the harbor and to provide support services for visitors, recreational boaters and other water-dependent activities by enforcing existing ordinances and, if necessary, establish new standards for the operation of entertainment, sport fishing and work boats;

J. In adopting this chapter, the City Council intends that the health, safety and welfare of those who use, enjoy and own property near Newport Harbor are not adversely affected by commercial activities conducted on those waters and that suitability and capability of the Newport Harbor infrastructure to accommodate future permit-dependent operations are adequately considered in permit application processes;

K. Fees and charges imposed on commercial users of Newport Harbor should recover City cost and contribute to major harbor maintenance projects (i.e., dredging);

L. Leases should be used where appropriate to recover the fair market value of the use of public tidelands from holders of permits for marine commercial activities on tidelands properties; and

M. To administer the use of public trust lands in a manner consistent with the tidelands trust, the California Constitution, the certified Local Coastal Program, and applicable laws. (Ord. 2008-2 § 1 (part), 2008)

#### **17.10.020 Permit for Commercial Activities in Newport Harbor Required.**

A. No person shall operate any charter on the waters of Newport Harbor without first obtaining a marine activities permit pursuant to this chapter.

B. No person shall schedule, arrange, or coordinate the operation of a bareboat charter or certificated charter on the waters of Newport Harbor without first obtaining a marine activities permit pursuant to this chapter.

C. No person who owns a certified vessel (a vessel inspected by the United States Coast Guard pursuant to Title 46 of the Code of Federal Regulations) shall permit or allow the use of the vessel as a certificated charter on the waters of Newport Harbor without first obtaining a marine activities permit pursuant to this chapter.

D. No person shall operate a bareboat charter or certified charter on the waters on Newport Harbor without having a valid marine activities permit on board the vessel at all times during the charter.

E. No owner of a vessel shall permit that vessel to be used as a bareboat charter on the waters of Newport Harbor unless a valid marine activities permit has been issued for the bareboat charter.

F. No person shall engage in, or conduct, any commercial activity on Newport Harbor, unless that person has obtained a permit for such activity pursuant to the provisions of this chapter. (Ord. 2013-11 §§ 138, 139, 2013; Ord. 2008-2 § 1 (part), 2008)

#### **17.10.025 Exemptions.**

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The requirements of this chapter are not applicable to the following:

A. Commercial fishing vessels and sports fishing charters traversing on the waters of Newport Harbor to engage in commercial fishing or other operations outside of Newport Harbor;

B. A person operating a single vessel as a charter for consideration with six or fewer passengers if the vessel is less than one hundred (100) tons, or twelve (12) or fewer passengers if the vessel is greater than one hundred (100) tons;

C. Businesses operating pursuant to a franchise or lease agreement with the City of Newport Beach;

D. Vessels exempted by this section shall not be used for office purposes unless such use is specifically authorized via a permit issued pursuant to this chapter;

E. Commercial activities operating pursuant to a permit issued by the Army Corps of Engineers, or a special event permit or commercial film permit issued by the City of Newport Beach;

F. Private marinas operating with a commercial pier permit issued by the City. (Ord. 2008-2 § 1 (part), 2008)

#### **17.10.030 Application for Permit.**

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An application for permit under this chapter shall be filed with the Harbor Resources Manager, upon forms provided by the City, and shall contain such information which the Harbor Commission or Harbor Resources Manager may require. (Ord. 2008-2 § 1 (part), 2008)

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**17.10.040 Filing Fee.**

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An application or renewal of an application for a marine activities permit shall be accompanied by the fee established by resolution of the City Council. (Ord. 2008-2 § 1 (part), 2008)

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**17.10.050 Issuance of Permit.**

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Upon receipt of a complete application for a marine activities permit, the Harbor Resources Manager shall investigate the information contained in the application. The Harbor Resources Manager shall refer the application to the Community Development Department to verify that all of the applicable Zoning Code regulations or conditions have been addressed or complied with and the Public Works Department to ensure safe vehicular ingress and egress, and the safe loading and unloading of passengers and supplies. The Harbor Resources Manager may also refer the application to the Harbor Commission, other appropriate City departments, or to the Orange County Sheriff's Harbor Patrol/Marine Operations Bureau for investigation, report or recommendation. The Harbor Resources Manager may inspect, or cause to be inspected, the vessel(s), marine sanitation device(s) of the vessel(s), boarding facilities, parking and all upland support facilities listed in the application. The Harbor Resources Manager shall notify an applicant of his or her decision in writing within ninety (90) days from the date on which a completed application is received.

Except as provided in this section, the Harbor Resources Manager may issue the marine activities permit upon a determination that approval of the application will not adversely affect the health, safety or welfare of those who use, enjoy, or own property near Newport Harbor.

The Harbor Resources Manager shall approve the application unless:

- A. The proposed commercial activity is likely to create noise which would adversely affect use or enjoyment of the waters of Newport Harbor by members of the public, or interfere with the rights of those who own property near the waters of Newport Harbor to the peaceful and quiet enjoyment of that property;
- B. The proposed commercial activity is likely to contribute to the problem of water pollution and/or litter in the waters of Newport Harbor;
- C. The vessel or craft to be used by the applicant does not satisfy the applicable standards of the United States Coast Guard, or City, County, State or Federal requirements of law;
- D. The proposed commercial activity is likely, when viewed in conjunction with other



anticipated charters and marine operations, to create a hazard to safe navigation, or otherwise interfere with the rights of others to use the waters of Newport Harbor;

E. The proposed commercial activity does not provide facilities to ensure adequate parking, safe vehicular ingress and egress, and the safe loading and unloading of passengers and supplies for the period subject to permit. For the purpose of this section, parking shall not be considered adequate unless the number of parking spaces required by Title 20 of this Code are provided for the duration of the permit and will be available during the days and hours of operation specified by the permit and that any off-site parking arrangements have been approved by the Planning Commission or the Community Development Director;

F. The commercial activity would violate City, County, State or Federal requirements of law;

G. The applicant has misrepresented material facts in the application;

H. The proposed commercial activity does not provide uplands support, docking or boarding facilities sufficient to safely accommodate the size of vessel(s) or number of passengers indicated on the application;

I. The proposed commercial activity includes an upland use that requires a use permit or other approval under the City Zoning Code and such permit has not been obtained;

J. The applicant has a permit which is currently suspended or has been revoked, or a notice of revocation or suspension that is no longer subject to appeal has been issued within the past ninety (90) days. (Ord. 2013-11 § 140, 2013: Ord. 2008-2 § 1 (part), 2008)

#### **17.10.070 Power to Impose Conditions—Hold Harmless.**

A. In granting any permit pursuant to this chapter, the Harbor Resources Manager, or the Harbor Commission on appeal, may impose any additional conditions on the permit to ensure that the proposed commercial activity will be compatible with the predominantly recreational character of Newport Harbor, the rights of other persons using Newport Harbor, the interests of residents and property owners whose properties abut or are in close proximity to Newport Harbor, and the interests of the general public. Any such permit shall contain a provision stating that the permittee shall defend, indemnify and hold the City and the County of Orange harmless from any claim for damages, penalties or fines arising out of the exercise of the permit; or the activities of the permittee carried on under the authority of such permit.

The Harbor Resources Manager or Harbor Commission, on approval or review, shall have the power to impose new conditions or modify existing conditions with regard to any permit issued pursuant to this chapter upon a determination that the operations by the permittee, in the absence of the new or modified conditions, may adversely impact the health, safety or welfare of those who use, enjoy or own property near or on the waters of Newport Harbor.

B. All permits issued pursuant to this chapter are subject to the following standard conditions:

1. Adequate off-street parking shall be provided for all passengers or patrons of the commercial harbor activity;
2. No passenger loading or unloading is to occur at any fuel dock or public dock;
3. Passengers transported to or from the commercial harbor activity shall not be picked up from, or unloaded on, City streets unless specifically approved by the Harbor Resources Manager;
4. All passengers and provisions shall be loaded and unloaded only from docks or piers where the abutting uplands property is commercially zoned, unless specifically approved in writing, in advance, by the Harbor Resources Manager;
5. Music and sound from the vessel shall be controlled so as not to disturb a person of normal sensitivity at a point one hundred (100) feet from the hull of the vessel;
6. Music, live entertainment, and all forms of amplified sound are prohibited after ten p.m.;
7. Air horns, whistles, bells, and other noisemaking equipment shall not be used, except as required by Coast Guard regulations;
8. All trash and litter generated by the activity shall be properly disposed of in a private trash receptacle;
9. All vessels in excess of twenty-five (25) feet in length shall operate within main navigational channels, as far from shore as practical, and the route of travel must be at least one hundred (100) feet from any residence;
10. All vessels equipped with marine sanitation devices shall comply with United States Coast Guard requirements in the use of approved holding tanks for raw sewage, and dye tablets shall be installed in holding tanks during the operation of the commercial harbor activity as required by the Harbor Resources Manager;
11. All Federal, State, County and City statutes, rules, ordinances, laws and regulations shall be obeyed;
12. All required insurance shall be maintained in full force and effect for the full term of the permit;

13. All signs shall comply with the applicable provisions of Title 20 of this Code. (Ord. 2013-11 § 141, 2013; Ord. 2008-2 § 1 (part), 2008)

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**17.10.075 Insurance.**

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Businesses operating on the harbor with a permit issued pursuant to this chapter shall maintain and provide to the City proof of insurance covering its operation, with such policy limits and coverage as established by the City Risk Manager. Proof of insurance must clearly identify the activities and/or vessels covered. (Ord. 2008-2 § 1 (part), 2008)

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**17.10.080 Duration of Permit.**

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Unless otherwise specified, a permit issued pursuant to this chapter shall be valid for twelve (12) months from the date of issuance, unless terminated or revoked prior. The Harbor Resources Manager may issue a permit for a shorter duration, provided the applicant meets all the requirements of this chapter for the duration of the period remitted. (Ord. 2008-2 § 1 (part), 2008)

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**17.10.085 Enforcement—Right of Entry.**

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A. Enforcement. It shall be the duty of the Harbor Resources Manager to enforce each and all of the provisions of this title, and the Chief of Police and/or Harbormaster shall render such assistance in its enforcement as may be required from time to time by the Harbor Resources Manager.

B. Right of Entry. The Harbor Resources Manager, Harbormaster and each and all of his or her assistants and any Police Officer or City employee whose job includes the enforcement of this chapter, shall have the power and authority to enter, free of charge, and at any reasonable time, any place of business or vessel subject to the requirements of this chapter. (Ord. 2013-11 § 142, 2013; Ord. 2008-2 § 1 (part), 2008)

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**17.10.090 Suspension/Revocation.**

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Any permit granted pursuant to the provisions of this chapter may be suspended or revoked by the Harbor Resources Manager, in whole or in part, upon fifteen (15) days' prior written notice to the permittee, served in accordance with Section 1.05.030 of the Code, directing the permittee to appear at the time, date and place specified in the notice to show cause why the permit shall not be suspended or revoked. The notice shall specify the reasons for the proposed action. A permit may be suspended or revoked on any of the following grounds:

- A. That the permit holder has made a misrepresentation as to any material fact set forth in the application;
- B. For violation of any law, rule, condition of permit or regulation of the United States, the United States Coast Guard, the State of California, the City of Newport Beach, or the County of

Orange relating to the commercial activities authorized by any permit issued pursuant to this chapter;

C. That the commercial activities of permittee adversely affect the health, safety or welfare of those who use, enjoy or own upland property in Newport Harbor;

D. That the commercial activities of permittee fall within the criteria for denial of an application, as set forth in subsections (A) through (J) of Section [17.10.050](#);

E. The permittee has discharged or has permitted or allowed any other person on a vessel operating under the permit to discharge any human or animal excreta from any head, toilet, holding tank or similar facility into the waters of Newport Harbor;

F. Failure to continuously maintain insurance in the appropriate coverage and amounts. (Ord. 2013-11 § 143, 2013; Ord. 2008-2 § 1 (part), 2008)

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**17.10.095 Appeal.**

Appeals of any decision of the Harbor Resources Manager shall be made in accordance with or Chapter 17.60 or Chapter 17.65, as applicable. (Ord. 2013-11 § 144, 2013; Ord. 2008-2 § 1 (part), 2008)

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**17.10.100 Transfer of Permit.**

No permit issued pursuant to the provisions of this chapter shall be transferable either by assignment, sale, hypothecation, and operation of law or otherwise without permission of the Harbor Commission having first been obtained. Application for transfer of any permit shall be subject to the same terms, conditions and requirements as an application for an original permit. In approving the transfer of any existing permit, the Harbor Commission may impose such conditions as it may determine are in the public interest. (Ord. 2008-2 § 1 (part), 2008)

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**17.10.110 Licenses and Fees Not Exclusive.**

Fees and permits required by this chapter shall be in addition to any license, permit or fee required under any other chapter of this Code or any other provision of law. (Ord. 2008-2 § 1 (part), 2008)

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**17.10.120 Application to Existing Commercial Activities.**

The commercial activities of those holding valid permits issued prior to the effective date of this chapter (March 24, 2006) may be continued to the extent authorized by the prior permit, provided the previously approved commercial activity shall not be increased or expanded beyond the activities conducted as of March 24, 2006, the effective date of this chapter, adopted by Ordinance No. 2006-3 § 2 (part). The holder of a permit issued under Chapter 17.41 (repealed effective March, 2006) shall apply for a renewal of the permit issued under

Chapter 17.41 as required by this chapter on or before December 1, 2008, and shall be issued a permit under this chapter to operate under the previously approved conditions and any condition of this chapter not inconsistent with the operations and activities authorized under the previously issued permit.

All marine activities permits issued under this section shall be deemed to meet the requirements of Chapter [17.10](#) for renewal purposes unless or until such time as the Harbor Resources Manager or the Harbor Commission determines there is a substantial change in the commercial activity. A substantial change may include, but is not limited to, the following:

- A. An increase in or expansion of the operational characteristics of the commercial activity;
- B. Change in the vessel(s) authorized to operate under the terms of the permit, which change results in an increase in size or capacity of the vessel;
- C. Change in the maximum number of patrons or passengers authorized to participate in the commercial harbor activity on an authorized vessel;
- D. Change in the approved off-street parking agreement(s), or loss of parking provided prior to the effective date of the ordinance codified in this title;
- E. Change in the physical condition of the dock, gangway or pilings that would compromise the safety of the patrons or passengers;
- F. Change in the location where the vessel(s) is berthed and/or loads and unloads patrons or passengers and/or provisions for the commercial activity;
- G. Change in the approved route of travel;
- H. Failure to correct a violation of the standard conditions imposed pursuant to Section [17.10.070](#)(B). (Ord. 2008-2 § 1 (part), 2008)

**Attachment B**  
**MAP Application**



# MARINE ACTIVITIES PERMIT APPLICATION

## CITY OF NEWPORT BEACH

Harbor Resources Division

829 Harbor Island Drive, Newport Beach, CA 92660

(949) 644-3034, Fax (949) 723-0589

### Type of Permit:

<b>New</b>	<input type="checkbox"/>	<b>Property Owner</b>	<input type="checkbox"/>
<b>Renewal</b>	<input type="checkbox"/>	<b>Charter Operator</b>	<input type="checkbox"/>

### Applicant Information

Business Name:
Contact Name:
Address:
Phone Numbers:
Mailing Address:
Email Address:
Newport Beach Business License #:
Property Owner:
Mailing Address:
Phone Numbers:
Manager's Name/Numbers:
Approved Captains:

*For each vessel that will be operating under this permit a Vessel Information Form must be completed and attached.*

*Evidence of insurance naming the City as an additionally insured will be sent for Harbor Resources files.*

*I declare under penalty of perjury that the foregoing is true and correct:*

\_\_\_\_\_  
**Applicant's Signature**

\_\_\_\_\_  
**Date**

### Approved by:

Planning Department: \_\_\_\_\_ Date: \_\_\_\_\_

Public Works, Transportation: \_\_\_\_\_ Date: \_\_\_\_\_

### Inspected and Approved by:

Harbor Resources: \_\_\_\_\_ Date: \_\_\_\_\_

**Denied by:** \_\_\_\_\_ **Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## VESSEL INFORMATION FORM

**To process the Marine Activities Permit this form must be completed  
for every vessel that will operate under this permit.**

### Vessel Name:

Vessel Owner Name:
Address:
Phones Numbers:

### Vessel Information

Location: <i>Attach marina layout including slip numbers.</i>	
Make:	Model:
Length:	Attach Vessel Documentation:
Attach Coast Guard Certification:	
Other Information:	

### Attach a drawing of each vessel per page, to include:

1. Floor layout for all decks
2. Holding tank location and capacity
3. Other technical information.

### Methods of Operation

Hours of Operation:	
Maximum Passenger Capacity, Including Crew:	
Maximum Passenger Count for Charters, Including Crew:	
Routes of Travel (must be 100 ft. from residents):	
Loading and Unloading Locations:  <i>Attach Evidence of Valid Commercial Pier Permit for Passenger Loading/Unloading Location and Written Authorization from the Property Owner if Different from Applicant.</i>	
Type of Merchandise Sold:	
Disposal Methods For:	Sewage:
	Grey Water:
	Trash:



Entertainment and Sound Amplification:	Type of Activities:
	Type and Location of Speakers:
	Speakers Supplied by Vessel or Hired:
	Noise Abatement Techniques (closed windows, no music on open decks, captain controls the volume etc...)
Parking Facilities Provided:	Describe Method of Notifying Passengers of Parking Location:
	<i>See Additional Questions on Page 6.</i>
Food and Beverage Preparation and Service Description:	
Applicable Permits:	

**Other information pertinent to traffic, parking, noise, pollution, litter or other matters which could adversely affect the health, safety and welfare of those in Newport Harbor. Or provide any comments.**

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**Marine Activities Permit Parking**  
**(attach additional sheets if necessary)**

1. Describe peak occupancy of vessels you intend to operate. Please note that you will need to provide parking at 1 space for every 3 occupants (passengers + crew) of all vessels in operation at a given time.  

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2. Identify the location(s) of off-street parking and the number of spaces at each location. (Be specific. Provide schematic.)  

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3. Identify when are you entitled to use the parking spaces (i.e. days of week, hours of the day) at each location.  

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4. How is this parking secured? (Provide agreement or lease.)  

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5. Identify all *other* users that are entitled to use each parking facility including their use and hours/days of operation? Provide a copy of their parking agreements (recorded or not).  

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6. Describe any form of transportation from the off-street parking to the boarding location (i.e. shuttle service, bus etc.). Please include the number of vehicles and specific loading and unloading locations and procedures.  

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7. Please provide an authorization letter from the property owner(s) of each off-street parking facility verifying the use of the parking facility.

## Vendor List

All vendors who operate in Newport Beach must comply with the provisions set forth in Municipal Code Sec 5.04.020 which requires proof of a valid City of Newport Beach business license upon commencing their activity in Newport Beach. You can verify your vendors' business license at [www.newport-beach.ca.us /revenue](http://www.newport-beach.ca.us/revenue). Follow the link to business search.

List all vendors, contractors and performers hired by the Charter Company. (i.e. Bands, DJ's, Coordinators, Photographers, Caterers, Cleaning Crews, Florists, etc..)

Charter Company: \_\_\_\_\_

[illegible]